

**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF**

**SOUTH CAROLINA**

**DOCKET NO. 2020-147-E**

**IN RE:**

**Randy and Cheryl Gilchrist,  
Complainants/Petitioners,**

**v.**

**Duke Energy Carolinas, LLC,  
Defendant/Respondent.**

**Duke Energy Carolinas, LLC's  
Answer and Motion to Dismiss**

Pursuant to S.C. Code Ann. § 58-27-1990, S.C. Code Ann. Regs. 103-829 and 103-352, and applicable South Carolina law, respondent, Duke Energy Carolinas, LLC (“DEC” or the “Company”) hereby answers the complaint filed in the above-referenced proceeding and moves the Public Service Commission of South Carolina (the “Commission”) to dismiss the above-captioned matter on the merits because the Complaint fails to adequately allege any violation of a Commission-jurisdictional statute or regulation, and a hearing in this case is not necessary for the protection of substantial rights. The Company also requests that the filing deadlines for all parties and the hearing date be held in abeyance until this motion is resolved. DEC shows the following:

**BACKGROUND**

Randy and Cheryl Gilchrist filed a complaint in the above-referenced proceeding, which was docketed on June 8, 2020. The complaint objects to the installation of a smart meter and requests the installation of an analog meter in place of the smart meter.

As described in its October 10, 2016 filing in Docket No. 2016-354-E, the Company has deployed Advance Metering Infrastructure (“AMI”), including smart meters, to its customers in South Carolina. The transmission of electricity usage data via smart meters enables a host of features that benefit customers. Such benefits include giving customers more information about how they use energy,<sup>1</sup> and laying the groundwork for programs that allow customers to stay better informed during outages, control their due dates, avoid deposits, be reconnected faster, and better understand and take control of their energy usage, and ultimately, their bills.<sup>2</sup> Acknowledging the benefits of smart meters, the Commission has required that its regulated investor-owned electric utilities make smart meters available to all customers, as well as implement a communications plan to inform all customers of the availability and capabilities of smart meters, and how customers may use those capabilities to better manage their power requirements.<sup>3</sup>

All meters used by the Company are tested to confirm that they are in compliance with Federal Communications Commission (“FCC”) rules and guidelines, which set exposure limits for all types of devices that emit radio frequencies. The FCC standards for intentional and unintentional radio emissions and safety related to radio frequency exposure, Parts 1 and 2 of the FCC’s Rules and Regulations (47 C.F.R. §§ 1.1307(b), 1.1310, 2.1091, 2.1093), govern the certification and design of communicating meters and other devices such as cordless phones, remote control toys, personal computers, televisions, vacuum cleaners, among others. All meters used by the Company comply with these standards.

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<sup>1</sup> Order No. 2016-791 at 1, Docket No. 2016-354-E (Nov. 17, 2016).

<sup>2</sup> Order No. 2016-489 at 2, Docket No. 2016-240-E (July 12, 2016).

<sup>3</sup> Order No. 2007-618 at 4, Docket Nos. 2005-385-E and 2005-386-E (Aug. 30, 2007).

The Company acknowledges that a small number of customers had reservations about the installation of smart meters. Customers who objected to the installation of a smart meter were temporarily bypassed during the deployment and continued to be served by automatic meter reading (“AMR”) meters during that time. AMR meters collect and transmit customers’ kWh usage via a low-power radio frequency signal (900 MHz radio frequency) that is read by equipment installed in the Company’s trucks as the meter readers drive by the location. As more smart meters are deployed, routes for reading AMR meters are being discontinued. For that reason, and to accommodate the limited number of customers’ concerns related to smart meter deployment, DEC proposed—and the Commission approved—the Manually Read Meter (“MRM”) Rider.

Under the MRM Rider, rather than electricity usage being communicated to the Company via radio frequency, the meter is instead read manually by a meter reader physically visiting the premises. As explained in the Company’s application in Docket No. 2016-354-E, there are additional costs to provide this manual service under the MRM Rider, including initial setup costs and ongoing costs related to reading the meter. While customers receiving service under the MRM Rider are required to pay those added costs, the Rider permits customers with medical issues to opt for a manually read meter without having to pay the associated fees:

The Initial Set-Up Fee and Monthly Rate shall be waived and not apply for customers providing a notarized statement from a medical physician fully licensed by the South Carolina Board of Medical Examiners stating that the customer must avoid exposure to radio frequency emissions, to the extent possible, to protect their health. All such statements shall be retained in Company records on a secure and confidential basis. The Company will provide the customer with a medical release form, to identify general enrollment information, and a physician verification statement. At the physician’s option, a comparable physician verification statement may be submitted.

As part of the AMI deployment, DEC sent a postcard to each customer, including Complainants in May 2018, containing notification that a smart meter would be installed at the

customer's service address. The form postcard is attached hereto as Exhibit A. Subsequent letters and phone calls to Complainants explained the circumstances surrounding Company's replacement of the meter, and that the customer's failure to enroll in the MRM Rider would result in the installation of a smart meter. After repeated contacts between May 2018 and October 2019, Complainants failed to enroll in the MRM Rider, and a smart meter was installed at the property on October 10, 2019.

### **ARGUMENT**

DEC denies all allegations contained in the Complaint not otherwise expressly admitted herein, and requests that this matter be dismissed because the Complaint filed contains no allegation that DEC has violated any applicable statute or regulation for which the Commission can grant relief and, pursuant to S.C. Code Ann. § 58-27-1990, a hearing in this case is not necessary in the public interest or for the protection of substantial rights.

The customer does not have absolute choice as to the meter employed by the utility to measure its customers' electricity usage. Indeed, from the standpoint of meter testing, ensuring the safety and accuracy of meters, maintenance, and other such practical considerations, it would be inefficient to the point of absurdity to permit each of the utility's customers to choose whatever meter they believed to be the most appropriate. This issue was recently addressed in a Commission order:

Commission Regulation 103-320 provides that meters shall be furnished by the utility. There is no provision in the applicable laws and regulations requiring utilities to use meters chosen by customers. . . . Duke's requirement that [a customer] choose between permitting the Company to install a smart meter and paying the fees to install a manually read meter does not violate any contract or other rights.

Order No. 2020-342 at 8, Docket No. 2019-331-E (June 30, 2020). The Company no longer supports the use of analog electromechanical meters, such meters have not been manufactured by

major manufacturers for some time, and customers who oppose the installation of a smart meter have been informed of the availability of the MRM Rider. The option of a manually read meter under the MRM Rider has been presented to Complainants, who have failed to avail themselves of that option. Complainants reference “medical concerns” the in the letter attached to the Complaint, and state that it is their belief that “smart meters could aggravate the condition.” While the Company lacks information sufficient to form a belief as to Complainants’ assertions concerning medical concerns and therefore denies such allegations, as discussed above, the Company’s MRM Rider provides for fee-free opt out for customers with medical issues. The Company would also note again that all meters it uses comply with FCC rules and guidelines, which set exposure limits for all types of devices that emit radio frequencies.

Complainants’ filing asserts that the Company “trespass[ed]” when it replaced the previous meter at Complainants’ property with a smart meter. First, the Company’s installation of a meter and access to its equipment is permitted by S.C. Code Ann. Regs. 103-344, which provides that “[a]uthorized agents of the electrical utility shall have the right of access to premises supplied with electric service, at reasonable hours, for the purpose of reading meters, maintenance, repair, and for any other purpose which is proper and necessary in the conduct of the electrical utility’s business.” The Company’s replacement of its meter therefore did not constitute “trespass.” Second, Complainants were provided multiple opportunities to elect to have a manually read meter installed and chose not to exercise that option.

Complainants’ filing also asserts that the use of smart meters constitutes a violation of Complainants’ right to privacy, and that the United States and South Carolina Constitution “protects the state’s residents from invasions of privacy which these meters violate.” First, although Complainants’ privacy concern is vague and unspecified, if Complainants are concerned

about the collection of interval data, they may enroll in the MRM Rider, under which no interval data is collected. Instead, a meter reader visits the customer's premise on a monthly basis and collects the monthly kWh reading, which is used to calculate the customer's bill.

Second, constitutional claims, such as Complainants' privacy assertions, may only be asserted against state actors, which the Company is not. The Commission recently addressed a similar complaint and concluded:

Duke is not a state actor, and Complainant therefore has no constitutional right to privacy that is enforceable against Duke. In *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974), the Supreme Court of the United States rejected the argument now advanced by Complainant. In that case, the Court held that a Pennsylvania electric utility with the exclusive right to provide power to its service territory was not a state actor.

Order No. 2019-686, Docket No. 2019-230-E (Sept. 25, 2019). As a limited liability company, the Company is a private actor, and no state action is conducted in the Company's use of smart meters.<sup>4</sup> In this case, there is no state law requiring the installation of smart meters, and customers may opt out of receiving service from a smart meter by enrolling in the MRM Rider. Moreover, it bears repeating that Complainants have available to them the manually-read meter program for which the associated fees may be waived pursuant to the terms of the MRM rider.

Inasmuch as the Complaint contains no allegation that DEC has violated any applicable statute or regulation for which the Commission can grant relief and, pursuant to S.C. Code Ann. § 58-27-1990, a hearing in this case is not necessary in the public interest or for the protection of substantial rights, the Company requests that the Complaint be dismissed.

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<sup>4</sup> See *Benlian v. PECO Energy Corp.*, No. CV 15-2128, 2016 WL 3951664, at \*7 (E.D. Pa. July 20, 2016) ("The installation of smart meters, and the provision of electricity to customers such as Benlian, is a business activity, and not a state function or a state action.").

## CONCLUSION

Complainants fail to adequately allege that DEC has violated any Commission jurisdictional statute or regulation. Therefore, this matter should be dismissed.

WHEREFORE, DEC moves the Commission to dismiss the Complaint with prejudice, requests that the Commission hold the testimony deadlines for all parties and the hearing in abeyance pending resolution of this motion; and requests such other relief as the Commission deems just and proper.

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Attorneys for Duke Energy Carolinas, LLC

Columbia, South Carolina  
July 8, 2020

Exhibit A

(front)



(back)





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 v.  
 Duke Energy Carolinas, LLC,  
 Defendant/Respondent.

**CERTIFICATE OF SERVICE**

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Robinson Gray Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below the **Answer and Motion to Dismiss Complaint on behalf of Duke Energy Carolinas, LLC** in the foregoing matter by electronic mail or by placing a copy of same in the U.S. Mail addressed as follows:

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Dated at Columbia, South Carolina this 8th day of July, 2020.

